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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 30 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in	)	
the Telecommunications Act of 1996	)	
	)	
Interconnection between Local	)	CC Docket No. 95-185
Exchange Carriers and Commercial	)	
Mobile Radio Service Providers	)	

**PETITION FOR PARTIAL RECONSIDERATION AND/OR  
CLARIFICATION OF FIRST REPORT AND ORDER**

AIRTOUCH PAGING  
CAL-AUTOFONE  
RADIO ELECTRONIC PRODUCTS CORP.

By: Carl W. Northrop  
Christine M. Crowe  
Their Attorneys  
PAUL, HASTINGS, JANOFSKY &  
WALKER LLP  
1299 Pennsylvania Avenue, N.W.  
Tenth Floor  
Washington, D.C. 20004-2400

By: Mark A. Stachiw  
Vice President, Senior Counsel  
and Secretary  
AirTouch Paging  
Three Forest Plaza  
12221 Merit Drive  
Suite 800  
Dallas, TX 75251  
(214) 860-3200

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## SUMMARY

AirTouch Paging, Cal-Autofone and Radio Electronic Products Corp. (collectively referred to as the "Companies") are petitioning the Commission to reconsider in part and to clarify in part the First Report and Order ("First Report") adopted in this proceeding.

The First Report takes significant strides toward the worthy goals of overcoming LEC resistance to the just compensation of CMRS paging carriers, and eliminating discrimination against CMRS paging carriers which has persisted due to unequal bargaining power. Because the Commission has reached correct decisions in many important aspects of the LEC/paging company relationship, the Companies' petition is narrowly focused, and raises only two issues. First, the Companies request that the Commission expressly find that CMRS paging companies provide "telephone exchange service" within the meaning of the 1996 Act. Such a finding would be consistent with prior Commission and court rulings and comports with the statutory definition of telephone exchange service.

Second, the Companies seek reconsideration of the Commission's decision to subject CMRS paging carriers to the unique burden of having to demonstrate their TELRIC-based costs in multiple state proceedings. Rather, the Commission

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should allow CMRS paging companies to get the benefit, through the statutory most favored nations provisions, of rate levels for comparable elements from agreements with telecommunications carriers. Multiple considerations support this relief: (a) CMRS paging networks are virtually identical to those of other wireless carriers who will receive rates based upon the LEC's TELRIC costs; (b) the denial of LEC TELRIC cost-based rates to CMRS paging carriers places them at a competitive disadvantage vis-a-vis other carriers providing paging services in conjunction with, or ancillary to, their primary service offerings; (c) each of the reasons supporting the Commission's decision to base other CMRS providers' compensation on the LEC's TELRIC costs applies to CMRS paging; and, (d) the denial of LEC TELRIC cost-based compensation to CMRS paging companies promotes unproductive arbitrage.

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To: The Commission		

**PETITION FOR PARTIAL RECONSIDERATION AND/OR  
CLARIFICATION OF FIRST REPORT AND ORDER**

AirTouch Paging ("AirTouch"), Cal-Autofone, and Radio Electronic Products Corp. ("REPCO") (collectively referred to herein as the "Companies"), by their attorneys and pursuant to Section 1.429 of the Commission's Rules,<sup>1/</sup> hereby request reconsideration in part and clarification in part of certain aspects of the Commission's First Report and Order<sup>2/</sup> (the "First Report") adopted in the captioned proceeding. The following is respectfully shown:

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<sup>1/</sup> 47 C.F.R. §1.429.

<sup>2/</sup> FCC 96-325, released August 8, 1996.

## I. Introduction

1. Viewed as a whole, the First Report represents an important, positive step toward the achievement of the pro-competitive objectives of the Telecommunications Act of 1996 (the "1996 Act").<sup>3/</sup> The Commission has acted on a timely basis in a comprehensive fashion to address the many complex issues involving the critical interconnection between a Local Exchange Carrier ("LEC") and other telecommunications carriers, including Commercial Mobile Radio Service ("CMRS") companies which provide paging service such as the Companies.<sup>4/</sup> In general, the Commission has struck a reasonable public interest balance between the competing interests of those seeking to interconnect, and those seeking to be paid for providing interconnection.

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<sup>3/</sup> Telecommunications Act of 1996, 47 U.S.C. §151, et seq. (1996).

<sup>4/</sup> AirTouch provides local, state, regional and nationwide service on both Part 22 and Part 90 frequencies. AirTouch is also a licensee of a nationwide narrowband PCS license and three regional licenses. Cal-Autofone and REPCO provide paging service in local service areas primarily in California. Each of the Companies as CMRS providers has existing interconnection arrangements with LECs and will continue to negotiate such arrangements in the future consistent with the First Report. Thus, the Companies are affected by decisions reached in the First Report.

2. With specific reference to CMRS paging, the First Report makes several important findings that are essential to promote a viable, competitive CMRS paging industry, including: (a) the affirmation of the right of CMRS paging carriers to interconnect to the public switched telephone network; (b) the prohibition of charges by a LEC to CMRS paging companies for the termination of LEC-originated traffic;<sup>5/</sup> and (c) the recognition of the obligation of LECs to provide termination compensation to CMRS paging carriers for the transport and termination of LEC-originated calls by the CMRS paging carrier. These rulings represent significant progress in the longstanding effort to overcome LEC resistance to the compensation of CMRS paging carriers under Section 20.11 of the Commission's Rules.<sup>6/</sup>

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5/ This finding goes a long way to addressing the historical discrimination suffered by CMRS paging at the hands of the LECs.

6/ Section 20.11 of the Commission's Rules provides that "[a] local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier." 47 C.F.R. § 20.11(b)(1). Though this provision was adopted in 1994, paging carriers have yet to receive compensation for calls they terminate. Indeed, some state commissions, such as the Connecticut Department of Public Utility Control, have expressly precluded CMRS paging companies from receiving compensation notwithstanding Section 20.11 of the FCC's (continued...)

3. The First Report also helps to redress the systematic discrimination suffered by CMRS paging carriers in interconnection arrangements with LECs which has persisted due to unequal bargaining power in the marketplace. The First Report should enable telecommunications carriers, such as CMRS paging companies, to interconnect with the incumbent LEC network at rates which reasonably reflect costs, without being forced to pay for the transport and termination of LEC-originated traffic, and to finally receive termination compensation for costs incurred to terminate LEC-originated traffic. These entitlements are essential to enable CMRS paging companies to compete on an equal footing with other telecommunications carriers who have enjoyed better treatment in their interconnection agreements with LECs.<sup>7/</sup>

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Given the myriad of important issues on which the Companies applaud the Commission for reaching the correct decisions, the Companies' petition for partial reconsideration and/or clarification is narrowly focused, and raises only two

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<sup>6/</sup>(...continued)

Rules. See Decision, Docket No. 95-04-04 (CDPUC 1995).

<sup>7/</sup> Although other CMRS carriers may have fared better than CMRS paging carriers, all CMRS carriers have suffered significant discrimination in their interconnection arrangements.



issues. First, the Companies request that the Commission expressly find that CMRS paging companies provide "telephone exchange service" within the meaning of the 1996 Act.<sup>8/</sup> Such a finding would be consistent with past Commission and court rulings on this subject and comports with the statutory definition of telephone exchange service.<sup>9/</sup>

5. Second, based upon the additional new information provided in this petition, the Companies seek reconsideration of the Commission's decision to subject CMRS paging carriers to the unique burden of having to demonstrate their TELRIC-based costs in a multitude of state proceedings.<sup>10/</sup> Rather, the Commission should allow CMRS paging carriers to receive the benefit, through the statutory most favored nation provisions,<sup>11/</sup> of rate levels

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<sup>8/</sup> In the First Report, the Commission implied that paging carriers were not telephone exchange service providers as provided by the 1996 Act. In the Second Report and Order, the Commission explicitly found, without any discussion, that CMRS paging services are not telephone exchange services. Second Report and Order and Memorandum Opinion and Order, ("Second Report"), FCC 96-333, released August 8, 1996, ¶ 333, n. 700.

<sup>9/</sup> See paragraphs 6-13, supra.

<sup>10/</sup> The Commission decided to not address any default proxies in this proceeding and left those to be determined in a Further Notice of Proposed Rule Making. First Report ¶ 1093.

<sup>11/</sup> Both Sections 251(c)(2) and 252(i) of the 1996 Act contain "most favored nation" provisions. The  
(continued...)

set for particular elements of service to other similarly situated telecommunications carriers. As shown in greater detail below, CMRS paging networks are virtually identical to other CMRS networks that receive LEC TELRIC-based termination rates, so the Commission should not subject the CMRS paging industry to unique and burdensome procedures that will have the practical effect of denying just compensation to CMRS paging providers.

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11/(...continued)

Companies do not agree with the Commission's narrow reading of Section 251(c)(2) which limits the most favored nation protections of Section 251(c)(2)(D) to those seeking interconnection for the provision of "telephone exchange or exchange access service." See First Report ¶ 1012. The preamble to Section 251(c)(2) makes the provision applicable to "all telecommunications carriers," not just to those providing "telephone exchange or exchange access service." The only references to "telephone exchange service" and "exchange access" are found in one of four subsections of Section 251(c)(2), specifically subsection (A) of subsections (A) through (D). The Companies read subsections (A) through (D) as establishing four independent interconnection entitlements, not a single mutually dependent entitlement in which a telecommunications carrier must meet the requirements of subsection (A) (i.e., to be providing telephone exchange service) in order to get the benefits of the two most favored nations protections of subsection (D). However, the Companies' concern about the scope of Section 251(c)(2) would be rendered moot if either (a) CMRS paging companies were found to render telephone exchange service within the meaning of the 1996 Act or (b) the most favored nation protections available to the Companies under Section 252(i) were construed sufficiently broadly to allow the Companies to receive meaningful most favored nation relief. See discussion infra. at Section III. A.

## **II. The Commission Must Conclude That CMRS Paging Companies Provide Telephone Exchange Service**

6. The Commission found in the First Report that "at a minimum" cellular, broadband PCS, and covered SMR providers provide telephone exchange service.<sup>12/</sup> The use of the clause "at a minimum" indicates that the Commission has left the door open for inclusion of other carriers in the telephone exchange service provider category.<sup>13/</sup> The Companies respectfully submit that the Commission must conclude that CMRS paging carriers also fall within this category.

7. In concluding that cellular carriers provide telephone exchange service, the Commission deemed it significant that prior FCC decisions had found cellular service to be an exchange service.<sup>14/</sup> On that basis, the Commission must also find that CMRS paging carriers provide telephone exchange service. The Commission has historically found that CMRS paging companies provide telephone exchange

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<sup>12/</sup> First Report ¶ 1013.

<sup>13/</sup> In the Second Report, however, the Commission specifically found that paging providers were not providing telephone exchange service, though it did so without any discussion of the public interest rationale or statutory interpretation supporting that conclusion. Second Report ¶ 333, n. 700.

<sup>14/</sup> First Report ¶ 1013.

service. In 1965, the Commission released a Public Notice announcing its policy regarding the filing of tariffs by radio common carriers.<sup>15/</sup> The Public Notice found radio common carrier ("RCC") paging and mobile telephone service "to be exchange service within the meaning of Section 221(b)" because it was a "local service furnished through interconnection with a landline telephone company."<sup>16/</sup> In 1975, the Commission reiterated its policy regarding the filing of tariffs by mobile telephone and paging service providers and in the process confirmed the classification of mobile radio and paging services as "exchange services."<sup>17/</sup>

8. Similarly, when the Commission found that telephone companies have an obligation to provide needed interconnection to radio common carriers, such as paging carriers, for the services they provide, the decision was based in part on the radio common carriers' status as exchange co-carriers.<sup>18/</sup> And in an early order preempting state entry regulation for radio common carrier services,

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15/ Public Notice, 1 FCC 2d 830 (1965). This finding was based on the more strict definition of telephone exchange service existing before the 1996 Act.

16/ Id.

17/ Tariffs for Mobile Service, 53 FCC 2d 579 (Com. Car. Bur. 1975). In both cases, the Commission was acting to assist the paging industry.

18/ Cellular Interconnection, 63 RR 2d 7, 17 (1987).

the Commission also reconfirmed "the status of RCC services as 'exchange communications.'"<sup>19/</sup> Though this early decision was vacated and remanded on other grounds, in the process the Commission reiterated its finding that "generally radio common carriers are not end users or interexchange carriers ... but exchange co-carriers."<sup>20/</sup>

9. Court rulings also confirm the status of CMRS paging service as exchange service under the definition contained in the Communications Act of 1934, prior to the revisions enacted in 1996 (the "1934 Act"). In United States v. Western Electric Co., 578 F. Supp. 643, 645 (D.D.C. 1983), the District Court, in interpreting the Modification of Final Judgment (the "Decree") ruled that one-way paging services are "exchange telecommunications services"<sup>21/</sup> within the meaning of the Decree.<sup>22/</sup> In sum,

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<sup>19/</sup> Preemption of State Entry Regulation, 59 RR 2d 1518, 1528, n. 37 (1986).

<sup>20/</sup> 63 RR 2d 1700, ¶ 2.

<sup>21/</sup> In fact, this determination was critical to the divestiture process. Because the RBOCs were permitted under the Decree originally only to provide exchange and exchange access services, the fact that the court found mobile telephone and paging to be exchange services explains why these facilities came to be held by the RBOCs rather than being retained by AT&T.

<sup>22/</sup> The classification of paging services as exchange services was left undisturbed even though other portions of the decision were reversed.

the Commission and the Courts have consistently found that CMRS paging is a telephone exchange service, and the Commission should continue to do so.

10. The 1996 Act did not promulgate a narrower definition of telephone exchange service than the 1934 Act. Rather, the definition of telephone exchange service was broadened. The 1996 Act continues to include within the definition the 1934 Act language that telephone exchange service is "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge."<sup>23/</sup> However, in the 1996 Act this traditional definition was expanded to include: "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."<sup>24/</sup>

11. Thus, the definition of telephone exchange service was broadened to include services and functions that are "comparable" to those provided by telephone exchange

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<sup>23/</sup> 47 U.S.C. § 153(r).

<sup>24/</sup> 47 U.S.C. § 153(47).

service providers<sup>25/</sup>, and the new language clearly sweeps within its ambit new technologies and network configurations.<sup>26/</sup> As is shown in greater detail in Exhibits 1 through 7, CMRS paging carriers enable subscribers of other telecommunications service providers to communicate with subscribers in the paging carriers' "local area" (defined by the Commission as MTAs). CMRS paging carriers provide this service by employing a system of switches, RF transport mechanisms and base stations which accomplish the task of receiving an incoming page and performing the translation, switching and routing functions necessary to deliver the page to the called party.

12. The Commission need not be concerned that one-way CMRS paging service does not constitute an "intercommunicating" service.<sup>27/</sup> One-way CMRS paging services provide for a reciprocal communication -- the called party is paged, with a numeric, alpha, or voice message, and the calling party receives a communication,

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<sup>25/</sup> Compare 1934 Act definition with 1996 Act definition, as cited in paragraph 10.

<sup>26/</sup> The new language extends to any "system of switches, transmission equipment or other facilities (or combinations thereof)", not just to traditional "telephone exchanges".

<sup>27/</sup> The concept of intercommunicating in the definition is not new. That part of the definition predates the 1996 Act.

either a beep or voice, that the page has been queued to be sent.<sup>28/</sup> There is no reason for the Commission to conclude that real-time interactive two-way voice communication is required to meet the statutory definition. For example, WEBSTER's New World Dictionary defines "intercommunicate" as "to communicate with or to each other or one another."<sup>29/</sup> Under this definition, the term "intercommunicating" is sufficiently broad to encompass purely one-way communication, when in fact paging has an element of reciprocal communication as previously discussed.<sup>30/</sup>

13. Based upon the foregoing, the Companies respectfully request that the Commission add CMRS paging carriers to the list of carriers who "at a minimum" should be classified as providers of telephone exchange service.

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<sup>28/</sup> When other services are provided, such as voice mail, the calling party also receives a greeting from the called party. This voice mail service is virtually identical to those provided by other telephone exchange service providers.

<sup>29/</sup> WEBSTER's New World Dictionary, College Edition (emphasis added).

<sup>30/</sup> Further, in almost all instances, the page generates either a call back (in the case of numeric paging) or some other action on the part of the called party.



**III. The Commission Should Reconsider, Based Upon  
the Most Favored Nation Provisions, Its Denial  
Of LEC Cost-Based Termination Compensation  
Rates to Paging Carriers**

14. The Commission declined to conclude that CMRS paging providers are entitled to the same termination rates charged by the LEC for termination of traffic onto the LEC's network.<sup>31/</sup> The Commission expressed concern that LECs' costs might not be an appropriate surrogate for CMRS paging carriers' costs, noting that one-way traffic agreements would not have a reciprocal aspect to facilitate negotiation.<sup>32/</sup> The Companies respectfully ask the Commission to reconsider its decision to single out paging companies for disparate treatment.

15. For a variety of public policy and public interest reasons, CMRS paging providers are entitled to rates for termination based upon the LECs' TELRIC costs for transport and termination for other telecommunications carriers. First, Section 252(i) entitles telecommunications carriers to most favored nation protection, which the Commission interprets to permit the interconnecting carrier to choose among individual provisions relating to the terms

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<sup>31/</sup> First Report ¶ 1092.

<sup>32/</sup> This aspect arises out of the natural interplay of requiring a party to give what it takes in terms of charges.

and conditions (including rates) in existing interconnection arrangements between the LECs and other parties. Second, CMRS paging providers' networks are comprised of similar types and amounts of equipment that perform substantially identical functions to the equipment utilized in other telecommunications carrier's networks, including the remainder of other CMRS networks. Third, denying CMRS paging providers termination rates based upon the LEC's costs places them at a competitive disadvantage vis a vis other CMRS providers entitled to those rates.<sup>33/</sup> Fourth, the same public policy and public interest reasons underlying the Commission's decision to apply LEC cost-based rates to other CMRS providers also apply to CMRS paging providers. Finally, denial of LEC cost-based rates encourages unproductive arbitrage.

**A. Most Favored Nation Protection Must  
Be Preserved for Paging Carriers**

16. In the First Report, the Commission found that the provisions of Section 252(i) apply to all telecommunications carriers,<sup>34/</sup> which includes CMRS paging

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<sup>33/</sup> This result is contrary to the public interest, since CMRS paging carriers must compete directly with these carriers, who are compensated by the LEC without regard to their costs -- and who can profit from increased efficiency and lowered costs as a result of unchanging compensation from the LECs.

<sup>34/</sup> First Report ¶ 1310.

providers.<sup>35/</sup> The Commission further concluded that Section 252(i) "supports requesting carriers' ability to choose among individual provisions contained in publicly-filed interconnection agreements."<sup>36/</sup> To that end, the Commission also concluded that:

parties may utilize any individual interconnection, service, or element in publicly filed interconnection agreements and incorporate it into the terms of their interconnection agreement.<sup>37/</sup>

Most importantly, the Commission specifically found that Section 252(i) pertains to rates, terms and conditions of filed agreements,<sup>38/</sup> and concluded that LECs may not "limit

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<sup>35/</sup> Section 252(i) provides that:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. 47 U.S.C. § 252(i).

<sup>36/</sup> Id. ¶ 1310.

<sup>37/</sup> Id. ¶ 1316.

<sup>38/</sup> Id. ¶¶ 1313 and 1314 ("Unbundled access to agreement provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions -- including rates -- negotiated by large IXCs, and speed the emergence of robust competition." ¶ 1313, emphasis added); ("In practical terms, this means that a carrier may obtain access to individual elements such as unbundled loops as the same rates, terms, and conditions as contained in any approved agreement. ¶ 1314, emphasis added).

the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing service (i.e., local, access or interexchange) as the original party to the agreement."<sup>39/</sup>

17. Notwithstanding the foregoing, the Companies are finding in the marketplace that certain LECs are unwilling to provide CMRS paging carriers the same rates, terms and conditions in interconnection agreements because the Commission singled out paging companies for disparate treatment in terms of their entitlement to LEC cost-based rates and a default proxy. The Companies ask the Commission to clarify that its decision to take further evidence on the issue of appropriate paging compensation rates and proxies was not intended to deny CMRS paging companies their most favored nation rights under Section 252(i) of the 1996 Act. Section 252(i) should entitle CMRS paging companies to any termination rate which other telecommunications carriers are offered.

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<sup>39/</sup> Id. ¶ 1318.

**B. LEC TELRIC-Based Termination Compensation is  
Appropriate for CMRS Paging Carriers**

**1. CMRS Paging Network Architecture  
is Virtually Identical to That of  
Other CMRS Networks**

18. CMRS paging networks employ similar types and amounts of equipment and similar system designs as are employed by other CMRS networks. Indeed, the switch and other infrastructure equipment deployed performs many of the same functions as are performed by equipment in other CMRS networks. In addition, the network architecture after the switch is similar to, and just as complex or more complex than<sup>40/</sup> those of, other CMRS providers.

19. The table attached as Exhibit 8 summarizes the similarities of the switch and other infrastructure equipment used and functions performed. This chart clearly demonstrates the functional similarity of a CMRS paging network to other CMRS networks.

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<sup>40/</sup> For example, a state of the art, high speed, wide-area digital paging network can be much more complex than a local covered SMR system. Yet, the covered SMR carrier has been given LEC TELRIC cost-based rates and a default proxy.

**2. The Denial of LEC Cost-Based Rates to CMRS  
Paging Carriers Places them at a  
Significant Competitive Disadvantage**

20. Denying CMRS paging carriers LEC cost-based rates places them at a competitive disadvantage vis-a-vis other CMRS providers with which they compete.<sup>41/</sup> Many of the CMRS providers entitled to LEC cost-based rates under the First Report also provide paging services on an adjunct basis in direct competition with the Companies' services. For example, broadband PCS providers such as Sprint Spectrum are offering a PCS phone and paging service all-in-one package. Cellular providers also offer paging services ancillary to their cellular service.<sup>42/</sup> Worst of all, a provider of traditional IMTS service who chooses to intermix two-way and one-way service on a common radio common carrier

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<sup>41/</sup> The LEC cost based rates are implemented mechanically through both requiring the LEC to charge for termination onto its network rates based upon the LEC's TELRIC-based costs and then making that rate symmetrical for LEC to CMRS traffic. This is the so called symmetrical rate.

<sup>42/</sup> Indeed, cellular carriers could become facilities based resellers of paging services and receive LEC cost based termination rates for their CMRS paging terminated traffic. See also, Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order, FCC 94-212, ¶61 ["... cellular carriers are in a position to begin offering one-way paging in conjunction with their cellular offerings...cellular operators are seeking to combine their service with one-way paging in order to compete against paging providers..."]

channel appears to be entitled to symmetrical rates based upon the First Report.<sup>43/</sup> These carriers are direct competitors with the Companies for paging customers.<sup>44/</sup> The First Report entitles these categories of carriers to LEC cost-based rates even for calls that they terminate to pagers. Providers of CMRS one-way paging-only service are the only providers of paging service that will not be permitted to recover their costs for terminating calls to pagers at LEC cost-based rates. This is particularly harmful to the one-way paging industry, which the Commission has found to be highly competitive.<sup>45/</sup>

21. The Commission should not place this disproportionate burden on CMRS paging carriers by making them the only CMRS carriers that would be required to incur

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<sup>43/</sup> IMTS services are the predecessor to cellular and provide for manual or automatic two-way voice communications. The Commission has permitted IMTS operators to use these frequencies also for paging services. 47 C.F.R. §22.561.

<sup>44/</sup> Narrowband PCS, a two-way service, is also a direct competitor to one-way paging. Although the First Report did not address narrowband PCS, the Companies interpret the First Report to allow these companies to receive LEC cost based termination rates.

<sup>45/</sup> Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, First Report and Order, FCC 96-263, released July 12, 1996, ¶ 21; Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Notice of Proposed Rulemaking, FCC 96-52, released February 9, 1996, ¶ 7.

the cost of preparing TELRIC studies to establish rates in a state arbitration proceeding.<sup>46/</sup> Since CMRS paging carriers are not entitled to interim termination compensation based either upon the default proxies or the current LEC cost-based rates made available to other CMRS providers, LECs have no incentive to voluntarily negotiate a termination compensation rate with CMRS paging carriers outside of a state proceeding, in which such a TELRIC study would be required. These studies will be extremely costly and time consuming to prepare and involve a substantial human resources commitment on the part of paging companies which no other category of CMRS provider has been required to undertake.

22. Denying LEC cost-based rates to CMRS paging companies also denies them a level playing field. CMRS carriers who enjoy rates based on the LECs' forward looking costs will be in a position to earn a larger profit from transport and termination services if they increase efficiency and lower their own costs. In contrast, CMRS paging carriers' recovery will be based upon their own

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<sup>46/</sup> As the Commission knows, CMRS paging providers do not maintain regulatory books as do LECs. Neither do they have financial staffs familiar with the preparation of cost studies. Thus, requiring these studies of CMRS paging carriers is an extreme burden.



proven costs,<sup>47/</sup> thus depriving them of the same opportunity to benefit from increased efficiency.

23. Finally, CMRS paging companies, which generally have no active presence before the state commissions, cannot be expected to fare well in adversarial proceedings in which TELRIC costs must be proved. The historical reluctance of LECs and state commissions to accord CMRS paging companies compensation for terminating traffic will be hard to overcome. The Commission has taken official notice on numerous occasions of the discrimination suffered by paging carriers at the hands of the LECs and the state Commissions.<sup>48/</sup> One recent example cited by the Commission is the decision of the Connecticut Department of Public Utility Control ("CDPUC") refusing to accord CMRS paging companies compensation for termination of traffic pursuant to Section 20.11 of the Commission's Rules.<sup>49/</sup> In

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<sup>47/</sup> These costs will of course assume certain levels of efficiency which may not currently be deployed -- thus increasing the hurdle to break even before additional efficiencies can be obtained.

<sup>48/</sup> First Report ¶ 1026.

<sup>49/</sup> AirTouch has a complaint pending before the Commission seeking redress for Southern New England Telephone Company's refusal to compensate AirTouch based upon that CDPUC decision.